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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DEBORAH J. BANTA,

11 Plaintiff,

12 v.

13 MEDICAL STAFFING NETWORK,
14 et al.,

15 Defendants.

CASE NO. C10-0866JLR

ORDER

16 This matter comes before the court on Plaintiff Deborah J. Banta's motion to
17 voluntarily dismiss the instant action (Dkt. # 17). Having considered the submissions of
18 the parties and the relevant law, the court GRANTS Ms. Banta's motion (Dkt. # 17).

19 Under Federal Rule of Civil Procedure 41(a)(1), a plaintiff may dismiss an action
20 without a court order by filing either (i) a notice of dismissal before the opposing party
21 serves either an answer or a motion for summary judgment; or (ii) a stipulation of
22 dismissal by all parties who have appeared. Where the opposing party has already served

1 either an answer or a motion for summary judgment, Federal Rule of Civil Procedure
2 41(a)(2) provides that:

3 an action may be dismissed at the plaintiff's request only by court order, on
4 terms that the court considers proper. If a defendant has pleaded a
5 counterclaim before being served with the plaintiff's motion to dismiss, the
6 action may be dismissed over the defendant's objection only if the
7 counterclaim can remain pending for independent adjudication.

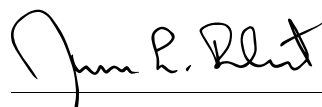
8 The court grants Ms. Banta's motion to dismiss with respect to Defendants Roger
9 Ozbirn and Good Samaritan Hospital ("Good Samaritan"). Because Mr. Ozbirn and
10 Good Samaritan filed an answer to Ms. Banta's complaint and raised a counterclaim for
11 attorney's fees (Dkt. # 9), Rule 41(a)(2) applies with respect to these Defendants. In their
12 response to Ms. Banta's motion, Mr. Ozbirn and Good Samaritan agree that the court
13 should grant Ms. Banta's motion. (Resp. (Dkt. # 19) at 1, 3.) Accordingly, the court
14 grants Ms. Banta's motion to dismiss with respect to Mr. Ozbirn and Good Samaritan
15 (Dkt. # 17), and dismisses Mr. Ozbirn and Good Samaritan's counterclaim against Ms.
16 Banta (*see* Dkt. # 9).

17 The court also grants Ms. Banta's motion to dismiss with respect to Defendant
18 Medical Staffing Network ("MSN"). Ms. Banta's action against MSN was automatically
19 stayed pursuant to 11 U.S.C. § 362(a)(1), which prevents the "commencement or
20 continuation . . . of a judicial, administrative, or other action or proceeding against the
21 debtor that was or could have been commenced before the commencement" of the
22 debtor's bankruptcy case. (*See* Dkt. ## 11, 12.) Although the general rule is that actions
taken in violation of an automatic stay are void, the Ninth Circuit has held that dismissal
of an action against a debtor "is permissible so long as it is 'consistent with the purpose

1 of the statute.’’ *Dean v. Trans World Airlines, Inc.*, 72 F.3d 754, 755 (9th Cir. 1995)
 2 (quoting *Indep. Union of Flight Attendants v. Pan Am. World Airways, Inc.*, 966 F.2d
 3 457, 459 (9th Cir. 1992)); *see also O’Donnell v. Vencor, Inc.*, 466 F.3d 1104, 1110 (9th
 4 Cir. 2006). As the Ninth Circuit explained in *Dean*, § 362(a) has two broad purposes: it
 5 “provides debtors with protection against hungry creditors,” and it “assures creditors that
 6 the debtor’s other creditors are not racing to various courthouses to pursue independent
 7 remedies to drain the debtor’s assets.” *Dean*, 72 F.3d at 755-56. Dismissal is not,
 8 however, appropriate “where a decision to dismiss requires a court to first decide any
 9 other issues presented by or related to the underlying [bankruptcy] case.” *Id.* at 756.
 10 Here, the court finds (1) that the dismissal of Ms. Banta’s claims against MSN is
 11 consistent with the purposes of § 362(a); and (2) that the court need not consider any
 12 issues presented by or related to the underlying bankruptcy case in determining whether
 13 to grant Ms. Banta’s motion to dismiss. Accordingly, the court grants Ms. Banta’s
 14 motion to dismiss her action with respect to MSN.

15 For the foregoing reasons, the court GRANTS Ms. Banta’s motion to voluntarily
 16 dismiss the instant action (Dkt. # 17); DISMISSES Mr. Ozbirn and Good Samaritan’s
 17 counterclaim against Ms. Banta (Dkt. # 9); and STRIKES Ms. Banta’s motion to amend
 18 her complaint (Dkt. # 13). All claims are dismissed without prejudice.

19 Dated this 17th day of August, 2010.

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 22 JAMES L. ROBART
 United States District Judge